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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. TRAVIS HILTON, Defendant	Case No.: 14-CR-2101-LRS-3 DEFENDANT'S SENTENCING MEMORANDUM **Sentencing Date: 5/3/16 11:00 a.m.**

TRAVIS HILTON, through his counsel, Troy J. Lee, of Troy Lee & Associates, submits the following sentencing memorandum for the Court's consideration as it pertains to Mr. Hilton's sentence.

I. Factual Objections to the PSR

There are no factual objections to the presentence report.

II. Objections to the Calculations Contained in the PSR

Mr. Hilton is requesting that the Court grant a two level reduction to the offense level for being a "minor" participant.

U.S.S.G. §3B1.2 provides that a defendant may receive the following reduction in the offense level based upon a mitigating role in the offense as follows:

(a) 4 levels if the defendant was a minimal participant in the criminal activity;

(b) 2 levels if the defendant was a minor participant in the criminal activity; or

(c) 3 levels if the defendant's conduct falls between the two classifications.

U.S.S.G. § 3B1.2

The determination on whether to apply the adjustment and to which adjustment to apply is based on the totality of the circumstances and involves a determination that is dependent upon the facts of the case. U.S.S.G. § 3B1.2, comment 3(c). Furthermore, the purpose of the provision is to "provide a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant." U.S.S.G. § 3B1.2, comment 3(a).

"Average participant" is defined as those persons who actually participated in the criminal activity at issue. Therefore, a defendant's relative culpability is determined by reference to his or her co-defendants. *See* U.S. v. Benitez, 34 F.3d 1489, 1498 (9th Cir. 1994).

In respect to relative culpability, a "minimal" participant is intended to cover defendants who are among the least culpable of those involved in the conduct of the group whereas a "minor" participant covers defendants who are less culpable than other participants but whose role could not be described as minimal. U.S.S.G. § 3B1.2, comments 4 and 5.

The offense involves the sale of prohibited synthetic marijuana from the "One Love" store from April 11, 2012 to January 8, 2015. Mr. Hilton must be distinguished from the other co-defendants in this case as he was an employee of the store, as opposed to an owner/partner in the business. The "One Love" store also sells drug paraphernalia and legal forms of synthetic marijuana, in the sense that it does not contain chemicals that are listed as banned Schedule I controlled substances.

Mr. Hilton was employed by the "One Love" store at the times of some purchases by the DEA agent—November 14th and December 5th of 2013. At that time, he was employed as a sales clerk, earning a minimum wage salary. He did not have any ownership interest in the business. Instead, the business was owned by the Ali family, although the other co-defendants clearly have some other involvement in the business, if not co-owners. He appears to be the only mere employee to be indicted in this matter. Those sales amounted to approximately 165 grams of prohibited synthetic marijuana as reflected in the presentence report.

The case is a serious matter and without intending to minimize its severity, a distinction must be drawn between the co-defendants in this case and Mr. Hilton's involvement, from merely just a pecuniary standpoint. As stated, Mr. Hilton was employed by the store, and he appears to be the only employee indicted on this matter.

Other individuals had more involvement in the business than Mr. Hilton. The store is owned by the Ali family—Riphe Ali and Shawat Ali, among others. Juwaher Elian is also a co-owner of the business, although she was not indicted with the other individuals—she is the wife of Riphe Ali. In fact, she was present with the Alis' when agents executed a search warrant on January 8, 2014, where they discovered drugs, drug paraphernalia, and firearms.

In addition, Majde Miqbel is a co-owner of the business and his name was found to be on an account at Wells Fargo for the business, as well as the Alis' and Jawaher Elian. Later, Riphe Ali provided confirmation that Mr.

Miqbel was a partner in the business. Mr. Miqbel also stated to agents that he sells "potpourri" that comes in from Sacramento and buys it wholesale from Yousef Elian.

Yousef Elian also has a lot of involvement in the business. He provided a lot of information and helped the agent buy synthetic marijuana on October 6, 2014. At that time, he was present with Riphe Ali. He even gave the agent a "deal" on the items that he was buying without receiving any permission from Mr. Ali, which tends to show more involvement than an employee. The agent ended up buying about 61 grams of synthetic marijuana on that date. Again, the agent purchased marijuana from Mr. Elian on December 12, 2014, when he purchased approximately 83 grams. In addition, agents found U.S. Post Office boxes from Mr. Elian to Mr. Ali in the course of a "trash pull." On January 8, 2015, a search warrant was executed upon Mr. Elian's residence and car, and a firearm was found in the center console of the car.

One individual may have played a lesser role in the business as Mr. Hilton. Miguel Garibay could be considered an employee. He helped the agent purchase synthetic marijuana and paraphernalia on February 3, 2014 (approximately 25 grams of synthetic marijuana and a counterfeit jersey on

December 5, 2013. His car had been observed by agents as early as December 3, 2013. However, despite the fact that his involvement was comparable to Mr. Hilton's involvement, he was not indicted.

Mr. Hilton was cooperative upon his arrest and spoke to agents about the matter. After his arrest, he served a week in custody before he was released on conditions.

Thus, although the offense is a conspiracy involving the distribution of synthetic marijuana, Mr. Hilton's involvement is limited as compared to the other co-defendants. As a result, he had a very small pecuniary interest in the business—that of an employee earning minimum wage. Because of Mr. Hilton's lack of involvement, as compared to the other co-defendants, Mr. Hilton requests the Court grant a two level departure, which would result in an adjusted offense level of 11, and a guideline range of 8-14 months. An offense level of 11 would place Mr. Hilton in zone B of the guidelines, and results in a probationary sentence falling within the sentencing guidelines.

If the Court were to deny the request, Mr. Hilton's adjusted offense level is a 13 and a criminal history category of I, which puts the guideline range at 12-18 months. However, Mr. Hilton is requesting a probationary sentence in either scenario, as statutorily, Mr. Hilton can receive a term of probation from one to five years.

III. Sentencing Recommendation

Mr. Hilton respectfully requests that the Court impose a probationary term of 3 years (whether it be a variance or within the guideline provisions), with some combination of community confinement and/or community restitution. Considering Mr. Hilton's unique circumstances regarding this case and his personal history as explained below, such a sentence would effectuate the purposes behind sentencing, and not be more than sufficient. Although a probationary sentence is under the guideline range, statutorily, Mr. Hilton can receive a one to five- year term of probation.

Ultimately, the goal is for the court to impose a sentence that is sufficient, but not greater than necessary, to achieve the purposes of 18 U.S.C. 3553(a). United States v. Carty, 520 F.2d 984, 991(9th Cir. 2008).

Thus, under 18 U.S.C. § 3553(a), the Court must consider the following factors when imposing a sentence:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;
(2) the need for the sentence imposed to:
(A) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and
(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
(3) the kinds of sentences available;
(4) the advisory guideline range;
(5) any pertinent policy statements issued by the Sentencing Commission;
(6) the need to avoid unwarranted sentencing disparities; and
(7) the need to provide restitution.

18 U.S.C. §3553(a).

No single factor is dispositive in a court's determination and the guideline range is only the starting point for the determination of a sentence. Carty at 991. Further, the guidelines and not presumed reasonable and are not given any greater weight than any other § 3553(a) factor. Id.

A. Nature and Circumstances of the Offense

As explained above in Section II, although the offense did involve a serious offense involving the sale of synthetic marijuana, Mr. Hilton's involvement was more limited than the other co-defendants and he maintained a far less pecuniary interest in the business. The court should factor in to its sentencing determination that ultimately Mr. Hilton was an individual who earned a "minimum wage" paycheck at a legal business, which unfortunately also sold synthetic marijuana—some of which did not contain Schedule I chemicals, and some of which did contain prohibited chemicals.

B. History and Characteristics of the Defendant

Mr. Hilton is 24 years old and has very limited contact with law enforcement prior to this charge. His only incident was a reckless driving charge from June of 2011 which was amended to a negligent driving on the condition that he complete a defensive driving class and some community service hours. He timely did the class, the community service hours, and paid off the fine and so probation was terminated and the case closed on February 4, 2013. That case did not involve any alcohol or drugs.

Due to his limited involvement with the criminal justice system, his involvement with this offense is would be considered “aberrant.” This one incident will have far reaching consequences that the court should take into account. Due to his mistake, he is forever a felon. He faces extreme collateral consequences—he cannot vote, he cannot serve on a jury, and he cannot possess a firearm, to name a few. More importantly to Mr. Hilton, he will face consequences to future employment—he will forever be asked whether he has a felony conviction, and that will minimize his employment opportunities. In other words, by maintaining employment at this business and providing for himself and his family with a fairly meager salary, his other chances at employment have been severely curtailed, despite the fact that he thought he had no liability as he was merely an employee of a legal, licensed business in Washington.

Mr. Hilton had some difficulties in his life. It is a testament that he did maintain law abiding behavior, and instead, attempted to maintain employment through the years. That is not to say that one cannot have a hard life and maintain law abiding behavior, but certainly, the Court has seen the effects of life's difficulties on individuals before the Court.

His brother, Christopher, died at the age of four, when Mr. Hilton was seven years old. Admittedly, it affected him a great deal, even stating that he felt he should have been the one who died. He never did receive any counseling for that, and as a result, worked through any issues on his own. That could have led to substance abuse issues later in life.

Now, Mr. Hilton is still struggling with issues, and continues to maintain employment. He was married to Ashley in early 2015, and has been in that relationship for a couple of years. They had known each other since high school. She has many medical issues and so he is the sole income earner in his family—she has had leg issues since the age of 2 due to leg surgery, an ovary medical issue, and anxiety and depression. He expressed concern about the mental health issues as she is not on any medications for those issues.

Mr. Hilton has his own medical issues as well—he has had a knee issue since he was 18 which causes constant pain and immobility, he has high blood pressure for which he takes medication, and appears to have mental health issues (his mother confirmed that and had concerns that it was due to his brother's death).

It is unknown whether Mr. Hilton suffers from substance abuse issues. He does not have any history with alcohol or controlled substances, other than the admitted use of marijuana. In fact, he and his wife turned to marijuana use to minimize their medical issues. However, he does realize the federal issues inherent in marijuana use, especially considering that he will be on supervision on this case. As such, although there appears to have been earlier problems, he has had negative UA's since October and is currently not in treatment program, yet has not had any positive UA's. Counsel does not believe that any substance abuse issues contributed to the offense considering the circumstances behind his involvement in the offense.

If there are substance abuse issues, and despite the hardships that Mr. Hilton has faced, he has been a productive member of society. As stated, his involvement in this case was unfortunately a by-product of gaining employment at the “One Love” store. After this case, he moved to Wenatchee to work at a similar store up there; however, it is known that they do not sell synthetic marijuana.

He does make a good wage at that store—something that he could not do when he worked at McDonalds. He worked there for four years prior to working at “One Love.” As stated, he is the sole wage earner and has to support himself and his wife. That is true even though he did not graduate from high school because he went to work. In addition, he unfortunately may suffer from an untreated learning disability. As such, his earning potential is pretty limited. His mother confirmed that he is a hard worker and always was good at maintaining employment.

C. Necessity of the Sentence

Mr. Hilton has only a negligent driving on his record in 2011 prior to this offense. He successfully completed the conditions of that sentence, including a defensive driving class, community service hours, and a fine. He has no other arrests and maintains employment. If a condition of this sentence includes substance abuse treatment, then he can receive that treatment in the community. As he has very limited contacts with law enforcement, and the circumstances behind this case, incarceration will provide no deterrent effect and a probationary term would be sufficient to deter Mr. Hilton from future violations.

D. Need to Avoid Sentencing Disparities

Although a co-defendant's sentence can be considered by the court as the guidelines are now advisory, the co-defendants has not yet been sentenced. However, as previously noted, in this case, there is a distinction between Mr. Hilton's role in the offense and the roles of the co-defendants. The closest comparison that Mr. Hilton's role in the offense as an employee that can be drawn is to Mr. Garibay.

Mr. Garibay, an employee of the store, was not indicted even though he sold synthetic marijuana and paraphernalia to the agent on February 3, 2014 (approximately 25 grams of synthetic marijuana), and a counterfeit jersey on December 5, 2013. His car had been observed by agents as early as December 3, 2013. That conduct mirrored Mr. Hilton's involvement in the case.

Contrary to Mr. Hilton, Yousef Elian had a lot of involvement in the business other than simply an employee. He sold synthetic marijuana to the agent on October 6, 2014. Interestingly, at that time, he was present with Riphe Ali, and gave the agent a “deal” on the items that he was buying (including 61 grams of synthetic marijuana), without receiving any permission from Mr. Ali. That shows more authority with the business than a mere employee.

The agent also purchased synthetic marijuana from Mr. Elian on December 12, 2014, when he purchased approximately 83 grams.

Agents also found boxes presumably used to transport synthetic marijuana that were addressed from Mr. Elian to Mr. Ali, and a firearm was found in Mr. Elian’s vehicle at the time of the execution of the search warrant.

If the Court is trying to prevent a sentencing disparity between Mr. Hilton and Mr. Elian, those facts are important as it shows that Mr. Elian was more involved than Mr. Hilton, and Mr. Elian actually had some interest in the business. Mr. Elian definitely made sales of synthetic marijuana to the agent. Mr. Elian definitely had the authority to “give deals” to customers. He did participate in some degree to the shipments of the synthetic marijuana coming in from other places, such as Sacramento. He carried firearms.

Despite those obvious differences and more involvement of Mr. Elian, he pled guilty to distribution of drug paraphernalia, and faces a guideline sentencing range of 6-12 months, and likely will ask for a term of probation. Although there may be procedural differences in resolution of their cases, that creates a disparity between Mr. Hilton's and Mr. Elian's potential sentences.

Even the owners of the store potentially are facing less time than Mr. Hilton, depending on the calculation of their offense level and criminal history, as the government will recommend a sentence at the low end of the applicable range. To the contrary, the government has the option of recommending the court impose a 42-month sentence on Mr. Hilton.

IV. Conclusion

Based on the foregoing, Mr. Hilton respectfully requests that the Court grant him a two-level departure based on his level of participation and/or sentence him to a three-year term of probation, which may include home confinement and community service. Considering the circumstances of the case and of Mr. Hilton, such a sentence does not create a sentencing disparity and is sufficient to effectuate the purposes of the sentencing guidelines.

RESPECTFULLY SUBMITTED this 4th day of April, 2016.

__________s/ Troy J. Lee____________
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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2016, I electronically filed the Defendant's Sentencing Memo with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following: Benjamin Seal, Assistant United States Attorney.

s/ Troy J. Lee____________
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